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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 DANIEL GARCIA and CELIA
13 HERNANDEZ, husband and wife, and
14 the marital community comprised
15 thereof,

16 Plaintiffs,

17 v.

18 WALMART INC., a foreign profit
19 corporation; WAL-MART #2241 POS;
20 "DOE(S) 1-100;" "CORPORATION(S)
21 XYZ 1-100,"

22 Defendants.
23

NO. 1:22-cv-3003

**NOTICE OF REMOVAL OF A
CIVIL ACTION**

24 Defendant Walmart Inc. ("Walmart"), by and through its undersigned counsel,
25 hereby gives notice of the removal of the above-referenced action from the Superior
26 Court of Washington for Yakima County Case No. 21-2-01976-39, pursuant to 28

NOTICE OF REMOVAL
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1 U.S.C. § 1441 (b), to the United States District Court for the Eastern District of
2 Washington and in support thereof states as follows:

3 **I. The State Court Action**

4 1. Plaintiffs Daniel Garcia and Celia Hernandez (collectively,
5 “Plaintiffs”), filed this lawsuit against Walmart in the Yakima County Superior
6 Court of the State of Washington, Case No. 21-2-01976-39 (the “state court
7 action”).

8 2. In the state court action, Plaintiffs assert claims of: (1) disability
9 discrimination; (2) failure to accommodate; (3) negligent supervision and hiring
10 and failure to train; (4) respondeat superior; (5) intentional infliction of emotional
11 distress; (6) negligent infliction of emotional distress; (7) violations of the ADA;
12 and (8) retaliation. *See* Complaint ¶¶ 4.1-11.5.

13 3. Plaintiffs reside in the State of Washington. *See* Complaint at ¶ 1.1.
14 Walmart is incorporated in Delaware, with its principal place of business in
15 Bentonville, Arkansas. *See* Declaration of Clarence Belnavis in Support of
16 Defendant’s Notice of Removal (“Belnavis Dec.”) at ¶ 2 and Exhibit 1.

17 4. Pursuant to 28 U.S.C. § 1446(a), a true copy of the Service of Process
18 Transmittal, including all attachments, from CT Corporation to Kim Lundy of
19 Walmart Inc. on December 20, 2021, is attached hereto as Exhibit A.

20 **II. The Removal is Timely**

21 5. Removal is timely pursuant to 28 U.S.C. § 1446(b) because Walmart
22 is filing this Notice of Removal within thirty days of receipt of the Complaint.
23 Defendant Walmart was served a copy of the Complaint through its agent, CT
24 Corporation System, in Olympia, Washington, by process server on December
25 20, 2021. *See* Exhibit A.

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1 **III. Venue is Proper in the Eastern District of Washington**

2 6. The United States District Court for the District of Washington,
3 Eastern Division is the federal judicial district embracing the Yakima County
4 Superior Court of the State of Washington, where this action was originally filed.
5 Therefore, pursuant to 28 U.S.C. § 128, the United States District Court for the
6 District of Washington, Eastern Division is the proper federal court in which to
7 remove this action.

8 **IV. Removal is Proper Pursuant to Diversity Jurisdiction**

9 7. Pursuant to 28 U.S.C. § 1332, this Court has diversity jurisdiction
10 over this action. There is diversity of citizenship between the parties, and the
11 amount in controversy contemplates an amount in excess of \$75,000.00, exclusive
12 of interest and costs.

13 8. Plaintiffs are Washington State residents, and Defendant Walmart is
14 a foreign corporation incorporated in the State of Delaware with its principal place
15 of business in Bentonville, Arkansas. *See* Complaint at ¶ 1.1; *see also* Belnavis
16 Dec. at ¶ 2 and Exhibit 1.

17 9. A fair and reasonable reading of Plaintiffs' Complaint reflects that
18 they are seeking damages in excess of \$75,000. In their Complaint, Plaintiffs seek
19 damages including "special damages", "judgment jointly and severally against
20 defendants", "punitive damages", "general damages, including but not limited to
21 physical, mental and emotional injury resulting from the acts complained of
22 herein", and "attorney fees, prejudgment interest, costs, exemplary, and punitive
23 damages" and "compensation for any tax penalty associated with recovery."

24 District courts have original jurisdiction of all civil actions where the matter
25 in controversy exceeds the sum of \$75,000 and is between citizens of different
26 states. 28 U.S.C. § 1332 (2005). In measuring the amount in controversy, a court

1 must assume that the allegations of the complaint are true and assume that a jury
2 will return a verdict for the plaintiff on all claims made in the complaint. *Kenneth*
3 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D.
4 Cal. 2002). Additionally, attorneys’ fees may be included in the amount in
5 controversy if recoverable by statute or contract. *Galt G/S v. JSS Scandinavia*, 142
6 F.3d 1150, 1155–56 (9th Cir.1998). Attorneys’ fees are recoverable as a matter of
7 right to the prevailing party under the Washington Law Against Discrimination.
8 *Conti v. Corp. Servs. Grp., Inc.*, 30 F. Supp. 3d 1051, 1078 (W.D. Wash. 2014),
9 *aff’d*, 690 F. App’x 473 (9th Cir. 2017) (“The WLAD provides for an award of
10 “the cost of suit including reasonable attorneys’ fees” to the prevailing party.
11 RCW 49.60.030(2).”). Thus, the court may consider the potential attorneys’ fees
12 that will be incurred in this matter when assessing the amount in controversy:
13 “The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s
14 complaint, not what a Defendants will *actually* owe.” *Korn v. Polo Ralph Lauren*
15 *Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (emphasis in original, internal
16 quotations omitted).

17 If the amount in controversy is not “facially apparent” from the Complaint,
18 “the court may consider facts in the removal petition and may require parties to
19 submit summary-judgment-type evidence relevant to the amount in controversy
20 at the time of removal.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373,
21 377 (9th Cir. 1997); *citing Allen v. R & H Oil Gas Co.*, 63 F.3d 1326 (5th Cir. 1995).
22 Here, Plaintiffs’ Complaint does not include a damages calculation. The Court
23 can therefore consider other evidence demonstrating that the amount in
24 controversy exceeds \$75,000.

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V. Proper Notice of Removal

Promptly after filing this Notice of Removal, Walmart will serve a copy upon Plaintiffs' counsel and will file a copy with the Clerk of the Yakima County Superior Court of the State of Washington.

WHEREFORE, Walmart hereby removes the above-captioned civil action to this Court's jurisdiction.

DATED this 10th day of January, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the date below written, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system and caused to be served a true and correct copy of same by the method indicated below and addressed as follows:

Dean Standish Perkins, Jr.
Dean Standish Perkins & Associates
119 1st Ave., S Ste. 310
Seattle, WA 98104-3429
dean@deanstandishperkins.com

X Via First Class Mail
X Via Email

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Attorneys for Plaintiffs

Dated: January 10, 2022.

s/Clarence M. Belnavis
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